

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TRACY H. NEIBERGER,

Petitioner,

vs.

UNITED STATES, et.al.,

Respondent.

8:25CV2**MEMORANDUM AND ORDER**

This matter is before the Court in consideration of a hand-written petition brought pursuant to [28 U.S.C. § 2241](#), filed on January 2, 2025, by Tracy H. Neiberger (“Petitioner”), an inmate at the Joseph Harp Correctional Center in Lexington, Oklahoma (the “Petition”). [Filing No. 1](#). Petitioner has not paid the \$5.00 filing fee or filed a motion to proceed without payment of fees.

Due to the deficiencies in the Petition and Petitioner’s failure to address payment of filing fees, this matter cannot proceed without amendment. However, because Petitioner is currently confined in Oklahoma and he is challenging a conviction and sentence also entered in Oklahoma, this Court is not the appropriate forum for this case to proceed.

A habeas corpus petition may be heard either in the district court where a petitioner is held in custody, or in the district court where the state court that convicted and sentenced him is located. [28 U.S.C. § 2241\(d\)](#). Petitioner is currently in custody at the Joseph Harp Correctional Center in Lexington, Oklahoma, [Filing No. 1 at 4](#), in Cleveland County, which sits within the Western District of Oklahoma. See [28 U.S.C. § 116\(c\)](#). Petitioner challenges his conviction and sentence by a state court located in Oklahoma

County, Oklahoma, [Filing No. 1 at 3](#), which also is within the Western District of Oklahoma. See [28 U.S.C. § 116\(c\)](#).

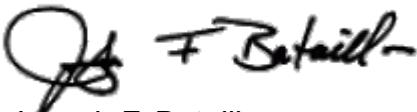
As Petitioner is neither housed in the District of Nebraska nor was the conviction or sentence he challenges performed here, this matter cannot proceed in this Court. As Petitioner challenges his sentence via [28 U.S.C. § 2241](#), transfer to the district where he is currently housed is appropriate at this time,¹ even if it is later determined that Petitioner must proceed under § 2254. As Lexington, Oklahoma, where Petitioner is currently housed, sits within the jurisdiction of the United States District Court for the Western District of Oklahoma, see [28 U.S.C. § 116\(c\)](#), transfer of this matter to that court is appropriate.

IT IS THEREFORE ORDERED that:

1. This case is transferred to the United States District Court for the Western District of Oklahoma for further proceedings. This case is terminated in this district.
2. The Clerk of Court is directed to take all necessary steps to transfer this matter to the United States District Court for the Western District of Oklahoma.

Dated this 17th day of January, 2025.

BY THE COURT:



Joseph F. Bataillon
Senior United States District Court

¹ A § 2241 habeas corpus petition attacks the execution of a sentence, or the manner in which the sentence is being carried out, and it is within the subject matter jurisdiction of the court presiding in the judicial district where the prisoner is incarcerated. [Matheny v. Morrison](#), 307 F.3d 709, 711–12 (8th Cir. 2002).